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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 101/2016*,**

Communication submitted by:	S.A.O. (represented by counsel, Niels-Erik Hansen)
Alleged victim:	The author
State party:	Denmark
Date of communication:	7 December 2015 (initial submission)
References:	Transmitted to the State party on 22 February 2016 (not issued in document form)
Date of adoption of decision:	29 October 2018

* Adopted by the Committee at its seventy-first session (22 October–9 November 2018).

** The following members of the Committee participated in the examination of the present communication: Ayşe Feride Acar, Gladys Acosta Vargas, Nicole Ameline, Magalys Arocha Domínguez, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshelia, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Yoko Hayashi, Lilian Hofmeister, Ismat Jahan, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Bandana Rana, Patricia Schulz and Wenyan Song.

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1.1 The author is S.A.O., a Somali national born in 1989. She sought asylum in Denmark in 2014, but her application was rejected and she risks deportation to Somalia. She claims that, if Denmark proceeds with her deportation, it would be in violation of articles 2 (d), 12, 15 and 16 of the Convention, read together with the principle of non-refoulement as set out in the Committee's general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women. The Convention and the Optional Protocol thereto entered into force for the State party on 21 May 1983 and 22 December 2000, respectively. The author is represented by counsel.

1.2 In her initial submission of 7 December 2015, the author asked the Committee to request Denmark to halt her deportation pending the examination of her case. On 22 February 2016, when registering the communication, the Committee invited the State party to do so. On 11 August 2016, the State party informed the Committee that, on 22 February 2016, the Danish Refugee Appeals Board had suspended the time limit for the author's deportation.

Facts as submitted by the author

2.1 After her father died in 2005, the author went to live with her uncle's family in Baardheere, Gedo region, in Somalia. She has a younger sister, but has not contacted her since her arrival in Denmark. Her uncle's family beat her, spoke rudely to her and treated her as a slave. She was in love with S., whom she was meeting at his shop. She wished to marry him, but her uncle's family opposed this and arranged for her marriage to an older man, F. She did not know him, but notes that he belonged to a clan in Baardheere and was her uncle's wife's brother.

2.2 On the day of the wedding, the author was not allowed to attend the ceremony at the mosque. When she learned that the ceremony was over, she visited S. However, her uncle and his wife arrived and beat her. They threatened to stone her, as she was already a married woman and therefore could not have a friend. The author claims that no police officers were present and that there was only an Al-Shabaab force in the area, but she did not complain to them as that would have created problems.

2.3 The author was locked in a room in the family home for two days. Subsequently, her husband arrived. The author's uncle's wife threatened her, saying that if she did not accept F. as her husband, she would report her to Al-Shabaab. F. struck the author with a stick. The author said that, in order to be allowed to leave the house, she agreed to being married. She was released but was watched closely. The family began preparations for a celebration of the wedding the next day. The house was decorated and an animal was readied for slaughter. S. sent a friend, who asked the author to stand ready as S. would send her a car later in the evening to help her to escape.

2.4 The author's trip was paid for by S., his mother and the author's aunt. S. also needed to escape, out of fear, but his trip was delayed as he had to await the reimbursement of some money.

2.5 The author claims that if she had not escaped immediately she would have been detained by her uncle. She travelled first to Ethiopia, where she was informed by S.'s mother that S. had been arrested on the basis of accusations made by her uncle.

2.6 The author explains that she asked the Danish Refugee Appeals Board to take her need for protection into consideration from the perspective of the Convention. According to her, the Board failed to take the Convention into consideration at all, even though the case related to a single woman from one of the most dangerous countries for women. The author also belongs to the minority Ashraf clan, which complicates her case further. It was important for the Board to consider whether she would be at risk of gender-specific violence in the event of her forcible return. The

Board, however, based its decision on considerations relating to credibility and did not address the need for protection.

2.7 On 1 December 2015, a majority of the members of the Danish Refugee Appeals Board rejected the author's asylum application, finding the author's explanations to be imprecise and divergent. The Board concluded that "the RAB's majority did not take the view that the applicant is in risk on return to Somalia without male network, and that she therefore will be at risk of assault under the Aliens Act, para 7 (2), like the fact that [she] purports to travel from Mogadishu to Baardheere cannot lead to a different result". According to the author, although a minority of the Board concluded that she might be at risk of persecution, the majority rejected her application, saying that it could not trust her story and that the fact that she was a single woman fearing persecution in Somalia was not grounds for asylum in Denmark.

2.8 The author adds that she had been exposed to female genital mutilation in the past and throughout her entire life has been oppressed as a woman in Somalia. She has not had the opportunity to seek help from the authorities in a male-dominated society. She was denied the wish and the right to choose a husband, as her uncle wanted to forcibly marry her to an unknown man. That Al-Shabaab no longer controls the area does not alter the fact that Somali society is strongly patriarchal and suppresses women who seek independence, through violent measures such as honour killings.

2.9 According to the author, regardless of any credibility issue, it is a fact that she is a single woman from one of the world's most repressive and discriminatory countries with respect to women. As a motive for her asylum claim she had mentioned that she would be at risk of gender-specific violence in Somalia, which includes the risk of being subjected to rape or other forms of gender-specific violence. Women with no male protection network cannot travel alone in Somalia. Various groups control the roads and will take advantage of male domination to persecute single women.

2.10 The author also fears persecution in her home town by her own family. Even though the area is controlled by government forces, there are no functioning authorities in Baardheere able to protect her against gender-specific violence. She will thus not only suffer gender-specific violence, but also receive no police or other protection.

2.11 The author claims that the authorities failed to assess her asylum application in the light of their obligations under the Convention, even though her counsel has specifically invited them to do so.

2.12 The author further claims that Denmark would be in violation of articles 2 (d), 12, 15 and 16 of the Convention and the principle of non-refoulement as set out in the Committee's general recommendation No. 32 in the event of her forcible return to Somalia.

State party's observations on admissibility and the merits

3.1 The State party presented its observations on admissibility and merits by a note verbale dated 11 August 2016. Preliminarily, it informs the Committee that, on 22 February 2016, the Refugee Appeals Board suspended the time limit for the author's deportation following the Committee's request for interim measures. The State party recalls the facts: the author, a Somali national born in 1989, entered Denmark on 15 August 2014 without valid documents and applied for asylum. On 20 August 2015, the Danish Immigration Service, rejected her application. On 1 December 2015, the Board confirmed that refusal.

3.2 The State party further analyses the reasoning for the decision of the Refugee Appeals Board dated 1 December 2015. As grounds for asylum, the author cited her fear in relation to her family and her husband for having resisted the marriage. She claimed that, in early 2013, her uncle had arranged her marriage to his wife's brother. About a week later, the marriage took place, in the author's absence. On the day of the wedding, she visited the shop of her friend S., but her uncle and his wife intruded, beat her and detained her at the family home for two days. She subsequently contacted S., who arranged for her escape a few days later.

3.3 The Refugee Appeals Board could not accept as a fact the author's statement on her grounds for asylum, as it appeared implausible and fabricated for the occasion; nor did her statement before the Board appear to reflect her own experience. The majority of the Board members emphasized that it did not seem credible that, both on the day of her alleged wedding and again, a few days later, she had contacted S. in his shop, nor that S. had remained in Somalia even though his life had allegedly been threatened. The explanation for why S. could not leave Somalia also lacked credibility, in particular given that he was, together with the author's paternal aunt, able to raise funds for the author's escape to Europe.

3.4 Given that the author's grounds for asylum could not be accepted as factual, a majority of the members of the Refugee Appeals Board could not accept as a fact that the author would be without a male network in Somalia and that, therefore, for that reason alone, she would be at risk of abuse falling within the scope of section 7 of the Aliens Act; nor could her having to travel to Baardheere lead to a different conclusion. The Board concluded accordingly that the author had not made a convincing case that she would be at specific and individual risk of persecution in Somalia.

3.5 The State party also provides detailed information as to the Board's organization, jurisdiction, composition, prerogatives, functioning, independence, the legal basis for its decisions and the decision-making process, the assessment of evidence and the availability of background information.

3.6 On admissibility, the State party believes that the author has failed to establish a prima facie case for the purposes of admissibility before the Committee. Accordingly, it has not been sufficiently substantiated that she would be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence in Somalia. The communication should therefore be declared inadmissible, as manifestly ill-founded under article 4 (2) of the Optional Protocol.

3.7 On the merits, the State party first points out that, in the present communication, the author has not submitted any new information other than that submitted before the immigration authorities and the Refugee Appeals Board. The author's deportation would not amount to a violation of the Convention. In support, the State party observes with regard to the author's credibility that the Board's evaluation of the credibility of asylum seekers is based on an overall assessment comprising, inter alia, an assessment of the asylum seeker's statements and demeanour at the Board hearing in conjunction with the other information in the case, including country background material and information gathered for the purpose of the case. If the asylum seeker's statements appear coherent, the Board normally accepts them as fact. If the statements are inconsistent, changeable, with expansions or omissions, the Board will seek clarifications.

3.8 According to the decision of the Refugee Appeals Board of 1 December 2015, a majority of the Board members found that the author's statements on the grounds for asylum could not be accepted as fact. They emphasized in particular that it did not seem credible that, both on the day of the wedding and again a few days later, the author had visited S. in his shop, not far from the family home. The majority also emphasized that it seemed to lack credibility that S. remained in Somalia even though

he had received death threats. The present communication has not provided new information as to the author's credibility and, accordingly, the State party cannot accept the author's statements as fact. In addition, in her communication to the Committee, the author has not disputed the credibility assessment carried out by the Board.

3.9 On the assessment of credibility in general, the State party refers to the case law of the European Court of Human Rights, in particular regarding the case of *R.C. v. Sweden*,[1] in respect of which the Court stated the following: "The Court observes, from the outset, that there is a dispute between the parties as to the facts of this case and that the Government have questioned the applicant's credibility and pointed to certain inconsistencies in his story. The Court acknowledges that it is often difficult to establish, precisely, the pertinent facts in cases such as the present one. It accepts that, as a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned."

3.10 In connection with the general human rights situation in Somalia, the State party notes that the author has claimed that, as a single woman without a social network, for that reason alone and owing to her clan affiliation, she would be at risk of gender-based persecution in Somalia. The State party notes that the information by the Office of the United Nations High Commissioner for Refugees in its position on returns to southern and central Somalia (June 2014), was known to the Refugee Appeals Board when it decided on the appeal on 1 December 2015 and was taken into account in the Board's assessment, as were other background documents. A convincing case has not been made that the author has a conflict with her uncle and that she would remain without a male network in Somalia. It is for the author to make a convincing case for the grounds for asylum, but she has failed to meet the burden of proof in the present case. Thus, it cannot be accepted as a fact that the author is a single woman, with no social network.

3.11 The State party adds that, in its judgment in *R.H. v. Sweden*,[2] the European Court of Human Rights reasoned as follows: "In the Court's view, it may be concluded that a single woman returning to Mogadishu without access to protection from a male network would face a real risk of living in conditions constituting inhuman and degrading treatment under article 3 of the Convention." This judgment, however, in the State party's opinion, cannot lead to a different assessment in the present case, as the factual circumstances differ considerably. The general conditions in Somalia and the Gedo region are not such that any woman returning there risks abuse. The State party further refers to recent background material from the Home Office of the United Kingdom of Great Britain and Northern Ireland (2016) and the Federal Office for Immigration of Austria (2015) showing that the author's home town is now controlled by the African Union Mission in Somalia (AMISOM) and the Somali National Alliance. It also notes that the case law of the Refugee Appeals Board does not require a male network for women returned to Mogadishu. Upon her return to Mogadishu, the author could contact her family and ask for assistance to travel to her home town.

3.12 On the risk of gender-based violence in Somalia, the State party reiterates that the author has failed to make a convincing case that she would be exposed to such real, personal and foreseeable risk in the event of her return. As the author's statements on her ground for asylum cannot be considered to be facts, given that it

[1] See European Court of Human Rights, *R.C. v. Sweden*, application No. 41827/07, judgment of 9 March 2010, para. 52.

[2] See European Court of Human Rights, *R.H. v. Sweden*, application No. 4601/14 of 10 September 2015, para. 70.

cannot be considered a fact that she had been forcibly married to an older man and that she had a relationship with another man before her marriage, the State party believes that these circumstances do not entail that the author would be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence or abuse by her family, authorities or other parties in Somalia. The State party also notes that the fact that the author has been subjected to female genital mutilation does not in itself justify asylum and does not lead to de facto future gender-based violence.

3.13 The State party next observes that, as far the author's clan affiliation is concerned, that she belongs to the minority Ashraf clan cannot in itself lead to a different assessment of the circumstances of her case. Background material from the Home Office of the United Kingdom (2015) indicates that in "areas of south and central Somalia outside Mogadishu, dominant clans may retain an ability to provide protection to its members and members of minority groups with which it has established a relationship/links".

3.14 The State party adds that the fact that the Refugee Appeals Board did not explicitly refer to the Convention in its decision of 1 December 2015 does not mean that the Board failed to take into consideration whether the author risked abuse, contrary to the right to protection under the Convention. The major part of the decision of the Board refers only to provisions of the Aliens Act and not to the underlying conventions on which the protection set out in the Danish provisions is based and which Denmark is obliged to observe.[3]

3.15 According to the State party, in the present case, the Refugee Appeals Board has taken into consideration all the relevant information. The present communication has not brought to light new information substantiating that the author would risk persecution or abuse justifying the granting of asylum. The State party refers to the views of the Human Rights Committee in *P.T. v. Denmark*:[4] "The Committee recalls its jurisprudence that important weight should be given to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice, and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists." The State party also notes that, in its views in *Mr. and Ms. X v. Denmark*,[5] the Human Rights Committee noted: "The authors' refugee claims were thoroughly assessed by the State party's authorities, which found that the authors' declarations about the motive for seeking asylum and their account of the events that caused their fear of torture or killing were not credible. The Committee observes that the authors have not identified any irregularity in the decision-making

[3] The author adds that, according to the explanatory bill amending the Aliens Act, "the intention of the proposed provision is that residence permits should only be issued to aliens who — in cases other than those falling within the 1951 Refugee Convention — have a right to protection under the international conventions to which Denmark has acceded. The proposed provision is therefore drafted in accordance with the relevant conventions, including in particular the European Convention on Human Rights and Protocol 6 thereto, as well as article 3 of the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." Thus, any assessment of claims under section 7 of the Aliens Act must be made not only pursuant to article 3 of the European Convention and article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but also pursuant to other relevant conventions. When relevant, the Refugee Appeals Board takes into account the issue of whether the asylum seeker risks being subjected to abuse in the context of discrimination against women. The assessment under section 7 of the Aliens Act also comprises the risk of gender-specific abuse, including female genital mutilation. Thus, in the event of her return to Somalia, the author would not risk persecution or abuse, and it would not constitute a violation of articles 2 (d), 12 and 16 of the Convention or general recommendation No. 32.

[4] CCPR/C/113/D/2272/2013, para. 7.3.

[5] CCPR/C/112/D/2186/2012, para. 7.5.

process, or any risk factor that the State party's authorities failed to take properly into account. In the light of the above, the Committee cannot conclude that the authors would face a real risk of treatment contrary to articles 6 or 7 of the Covenant if they were removed."

3.16 According to the State party, the same guarantees of due process applied in this case. The State party further refers to the decision of the Human Rights Committee in *N v. Denmark*:[6] "The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of a case, unless it can be established that such an assessment was arbitrary or amounted to a manifest error or denial of justice. The author has not explained why the decision by the Refugee Appeals Board would be contrary to this standard, nor has he provided substantial grounds to support his claim that his removal ... would expose him to a real risk of irreparable harm in violation of article 7 of the Covenant. The Committee accordingly concludes that the author has failed to sufficiently substantiate his claim of violation of article 7 for purposes of admissibility and finds his communication inadmissible."

3.17 The State party emphasizes that the Refugee Appeals Board, a quasi-judicial body, made a thorough assessment of the author's credibility, the background information available and the author's specific circumstances and found that she had failed to make a convincing case that she would risk persecution or abuse in Somalia. The State party endorses this finding.

3.18 In that connection, the State party also refers to the findings of the Human Rights Committee in, *Z. v. Denmark*:[7] "In the absence of evidence establishing that the decisions of the Refugee Appeals Board were manifestly unreasonable or arbitrary with respect to the author's allegations, the Committee cannot conclude that the information before it shows that the author's removal ... would expose him to a real risk of treatment contrary to article 7 of the Covenant."

3.19 The State party recalls that, in the present communication, the author has not brought to bear new, specific information about her situation. Rather, she is seeking to use the Committee as an appellate body to have the factual circumstances reviewed. The State party notes that the Committee must give considerable weight to the findings of fact made by the Refugee Appeals Board, which is better placed to assess the factual circumstances of the case. According to the State party, there is no basis for doubting, let alone setting aside, the assessment made by the Board that the author has failed to establish that there are substantial grounds to believe that she would be subjected to a real, personal and foreseeable risk of persecution in Somalia and that the necessary and foreseeable consequence of her return is that her rights under the Convention would be violated. Thus, the author's return to Somalia would not amount to a violation of articles 2 (d), 12 and 16 of the Convention.

Author's comments on the State party's observations on admissibility and the merits

4.1 The author's counsel provided comments on 24 February 2017. He first notes the State party's observation on the substantiation of the communication and claims that that issue seems closely linked to the merits of the case. In any event, that the author is a single woman at risk of being deported to a country that is not a party to the Convention, combined with the background information confirming her fear of being returned there, shows that she has a prima facie case under articles 1, 2 (d), 12 and 15 of the Convention.[8] He reiterates that the Refugee Appeals Board was asked

[6] CCPR/C/114/D/2426/2014, para. 6.6.

[7] CCPR/C/114/D/2329/2014, para. 7.4.

[8] Counsel does not refer to article 16 in his comments.

to specifically address the issue of the Convention in its decision but failed to do so. In addition, some members of the Board voted against the negative decision in the author's case.

4.2 On the merits, the author's counsel objects that, even if it were to be accepted that her story lacked credibility, the author is nonetheless a single woman from an area in Somalia to which she can no longer return. In addition to the persecution that she fears from her own family, she also fears other gender-specific forms of persecution by the male-dominated society in Somalia. The strong patriarchal society oppresses women seeking independence with very violent methods, including honour killings. That the author is a single woman in Europe is a clear indication that, by fleeing alone, she has rebelled. In that connection, he refers to the judgment of the European Court of Human Rights in *R.H. v Sweden* (see para. 3.11 above). He disagrees with the State party's argumentation thereon and notes that the Refugee Appeals Board has not concluded that the author would be able to seek the necessary protection from Mogadishu to travel upon her return. As the author is afraid of her family, however, she would be unable to secure the necessary support in question. He further argues that the Government and AMISOM control some urban areas, but that the roads are controlled by Al-Shabaab and criminal groups. Arguing that a male relative would travel to Mogadishu to accompany the author suggests that the male in question would put his own life at risk.

4.3 The author's counsel adds that the author had been forced to marry in Somalia but she refused to do so and fled. A widespread risk of gender-specific violence, including female genital mutilation, forced marriage, rape and other forms of gender-specific violence exists in the country. The author has described having been subjected to gender-based violence before she left the country. She claimed clearly that, upon return, she would be exposed to treatment contrary to the Convention. The Refugee Appeals Board, however, made no reference to her claim about the risk of gender-specific violence in its decision.

4.4 He maintains that articles 12 and 15 of the Convention have been violated. With regard to article 12, he specifies that the author has already displayed burn scars and that she fears being subjected to such treatment again, without providing further explanation. Article 15 is said to have been violated as the author "did not get a fair trial" and "something similar could not have happened to a man/boy in the legal system".

State party's additional observations

5.1 The State party provided additional observations on 26 June 2017. It notes that the author's claim that she is a single woman fearing persecution by her family cannot be considered to be new information, as she had already claimed that she was a single woman before the Refugee Appeals Board and in her communication. Instead, the claim shows that she disagrees with the Board's negative decision. With reference to the Board's decision of 1 December 2015 and to its previous observations, the State party points out that, as a result of the assessment made by the Board, the State party cannot consider it to be a fact that the author will be a single woman without a male network in Somalia, nor that the author was in conflict with her family when she left the country.

5.2 As to the author's counsel's reference to *R.H. v. Sweden* and the argumentation about the author's ability to seek the assistance of her male relatives for her trip to her home town, the State party observes that the Refugee Appeals Board made an addition to its observations of 23 June 2016, in accordance with its usual practice. Thus, the State party has put no interpretation on the Board's decision. The case law of the European Court of Human Rights requires no male network for women in

Mogadishu. Given that no new information on the author's family ties has been provided, the State party continues to believe that the author has a male network that would be able to offer her protection.

5.3 On the allegation that the Refugee Appeals Board has failed to take the Convention into consideration in its assessment, as it made no explicit reference to the provisions of the Convention in its decision, the State party notes that that issue has been examined by the Committee in a number of cases submitted by the same counsel.[9] It quotes the Committee's decision in *K.S. vs. Denmark*, in which it stated that the Committee also took note of the author's claims that the Danish immigration authorities had failed to consider her case from the perspective of the Convention and to mention the Convention in their decision, even though the matter had been raised both orally and in writing by her counsel during the Refugee Appeals Board hearing. The Committee takes note of the State party's reply that the Convention is a source of law in Denmark and forms an integral part of the assessments made by the Board in asylum cases. The Committee observes that the author's lawyer requested the immigration authorities to consider her asylum claim in the light of the Convention, without referring to specific provisions of the Convention and without substantiating her claims under any specific articles of the Convention.

5.4 On the author's counsel's contention to the effect that a minority group of the Refugee Appeals Board members did not accept the negative decision of the Danish Immigration Service, the State party refers to paragraph 6.3 of the Committee's decision in *K.S. v. Denmark*: with regard to the remarks regarding the minority of the members of the Board, the State party notes that the author repeatedly speculated about the facts and findings on which the dissenting members of the Board based their opinion. It observes that, pursuant to rule 40 of the rules of procedure of the Board, decisions of the Board are made by simple majority and that the Board's deliberations are confidential. Pursuant to rule 41 of the Board's rules of procedure, a case note on the result of the deliberations must be prepared immediately after the end of the deliberations and is not confidential. The State party notes that there is no obligation under the Convention to make public the opinion held by the minority of the Board members; no such obligation follows from Danish law either.

5.5 The State party observes that the general situation in Somalia, including the situation of women, is not such that all returnees risk abuse falling within the scope of section 7 (2) of the Aliens Act. The State party refers to the judgment of the European Court of Human Rights in *R.H. v. Sweden* and to recent background information, including the report by the Danish Immigration Service and the Danish Refugee Council entitled "South and central Somalia: security situation, al-Shabaab presence, and target groups". It transpires from this information that the author's home town is under the control of AMISOM.

5.6 The State party adds that, in her comments of 24 February 2017, the author submitted that Denmark had violated article 12 of the Convention, as she had previously displayed burn scars and that she feared further attacks if returned to Somalia. The State party notes that the author submitted no information about scars throughout her asylum proceedings or in her initial communication to the Committee. No information has been provided to the effect that the scars were inflicted in connection with the conflict in Somalia, as suggested by the author, nor that she fears suffering further attacks. Accordingly, the State party rejects this part of the communication.

[9] The State party refers to *P.H.A. vs. Denmark* (CEDAW/C/65/D/61/2013), *K.S. vs. Denmark* (CEDAW/C/65/D/71/2014), *X. vs. Denmark* (CEDAW/C/71/D/73/2014), *A.O.D. vs. Denmark* (CEDAW/C/70/D/84/2015), *S.F.A. vs. Denmark* (CEDAW/C/69/D/85/2015) and *K.I.A. vs. Denmark* (CEDAW/C/68/D/93/2015).

5.7 As regards the author's counsel's reference to article 15 in his previous submission, the State party notes that no such claim has been made previously. The author has also not substantiated a claim that she did not benefit from the same guarantees of due process as male asylum seekers throughout the asylum process. The State party thus finds it irrelevant to comment further on this part of the communication, which should be considered inadmissible, as manifestly ill-founded.

5.8 The State party reiterates that the communication should be considered inadmissible under article 4 (2) of the Optional Protocol, as manifestly ill-founded. Should the Committee consider the communication admissible, the State party maintains that no violation of articles 2 (d), 12, 15 and 16 of the Convention would occur on the merits in the event of the author's forcible return to Somalia.

Issues and proceedings

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 66 of its rules of procedure, the Committee may decide to consider the admissibility of the communication separately from its merits.

6.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes that the author claims a violation of her rights under articles 2 (d) and 16 of the Convention and to have exhausted available domestic remedies and that the State party has not challenged the admissibility of the communication on those grounds. The Committee observes that, under Danish law, no appeals against decisions of the Refugee Appeals Board can be lodged before the national courts. Accordingly, the Committee considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from considering the matter.

6.4 The Committee takes note of the author's subsequent claims under articles 12 and 15, as the author has displayed burn scars in the past and feared similar such attacks in Somalia and as she did not receive a fair trial and benefit from the same guarantees as male asylum seekers (see para. 4.4 above). In the absence of any other explanations or information in that connection, the Committee considers that part of the communication to be insufficiently substantiated for the purposes of admissibility, and, accordingly, inadmissible under article 4 (2) (c) of the Optional Protocol.

6.5 The Committee recalls the author's claim that the Danish refugee authorities have failed to assess her case from the perspective of the Convention, even though her counsel has asked them specifically to do so, and that her forcible return to Somalia will constitute a violation by Denmark of articles 2 (d), 12, 15 and 16 of the Convention. She fears persecution from her family as she had refused to forcibly marry an older man and maintained a relationship with an acquaintance, and also because, as a single women in a patriarchal society, she would be exposed to gender-based persecution and abuses and would not be able to travel safely from Mogadishu to her home town as the roads are controlled by Al-Shabaab or criminal groups.

6.6 The Committee refers to its general recommendation No. 32, pursuant to which, under international human rights law, the non-refoulement principle imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she may face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment (para. 21). The Committee recalls, in particular, that gender-related claims to asylum may intersect with other proscribed grounds of discrimination, including age, race, ethnicity/

nationality, religion, health, class, caste, being lesbian, bisexual or transgender and other status (para. 16). The Committee further refers to its general recommendation No. 19 (1992) on violence against women, in which it recalls that gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention, and that such rights include the right to life and the right not to be subject to torture (para. 7). The Committee has further elaborated its interpretation of violence against women as a form of gender discrimination in its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, in which it reaffirms the obligation of States parties to eliminate discrimination against women, including gender-based violence, resulting from the acts or omissions of the State party or its actors, on the one hand, and non-State actors, on the other (para. 21).

6.7 In the case at hand, the Committee observes that there is no claim that the State party has directly violated the provisions of the Convention, but rather that the violation would occur if the State party returned the author to Somalia, thereby exposing her to the risk of serious forms of gender-based violence.

6.8 The Committee takes note of the author's claim that, even though her counsel has invited the Refugee Appeals Board to examine her asylum case from the perspective of the Convention, the Board made no reference to the Convention in its decision. The Committee recalls that significant weight should be given to the assessment conducted by the State party's authorities, unless it can be established that the evaluation in question was clearly arbitrary or amounted to a denial of justice.[10] The Committee also notes that the author's counsel, when addressing the Board, has not formulated any clear claim under specific provisions of the Convention but has rather invited the authorities to bear the Convention in mind, in general, when examining the author's case. The Committee notes in that connection that the fact that the Board does not refer to a particular convention in its decision does not mean, per se, that it has assessed a particular case with no consideration of the Convention in question. In the light of this and in the absence of any evidence in the case file establishing that the Board's decision was manifestly unreasonable or arbitrary with respect to the author's allegations, the Committee considers that this part of the communication is inadmissible, as manifestly ill-founded under article 4 (2) (c) of the Optional Protocol.

6.9 The Committee further takes note of the State party's contention that all the author's allegations were thoroughly examined by the Danish Immigration Service and the Refugee Appeals Board, which dismissed them in their entirety because of a negative credibility finding that vitiated her claim. The Committee recalls that it is generally for the authorities of States parties to the Convention to evaluate the facts and evidence or the application of national law in a particular case,[11] unless it can be established that the evaluation was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice.[12] In that regard, the Committee notes that, in substance, the author is challenging the manner in which the State party's asylum authorities assessed the factual circumstances of her case, applied the provisions of the national legislation and reached their conclusions to the effect that she cannot be granted asylum in Denmark. The issue before the Committee is, therefore, whether there was any

[10] See, among others, *S.F.A. vs. Denmark*, para. 9.7.

[11] See, for example, *S.J.A. v. Denmark* (CEDAW/C/68/D/79/2014), paras. 7.9 and 7.10. See also *A.S. v. Denmark* (CEDAW/C/69/D/80/2015), para. 8.7.

[12] See, for example, *N.Q. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/63/D/62/2013).

irregularity in the decision-making process regarding the author's asylum application, to the extent that the State party's authorities failed to properly assess the risk of serious gender-based violence in the event of her return to Somalia.

6.10 The Committee notes that the State party's authorities found that the author's account lacked credibility owing to factual inconsistencies and a lack of substantiation, in particular regarding her forced marriage and persecution by her uncle's family. The Committee further notes that, notwithstanding the findings with respect to the author's credibility as described above, the State party also considered the general human rights situation in Somalia.

6.11 In the light of the foregoing, and while not underestimating the concerns that may legitimately be expressed with regard to gender-based discrimination in Somalia and the general human rights situation there, the Committee considers that the author has failed to substantiate, for the purposes of admissibility, that the Danish asylum authorities' assessment of her case, including that of the Refugee Appeals Board, and the lack of reference to the Convention in her asylum decision, resulted in any gender-based discrimination in the present case and that she would suffer persecution in case of forcible return to Somalia. There is also no element on file to allow the Committee to conclude that the State party's authorities failed to give sufficient consideration to the author's application for asylum, or that, in the examination of her case — that of a female asylum seeker — any procedural defect or arbitrariness could be revealed.

7. The Committee therefore decides that:

(a) The communication is inadmissible under article 4 (2) (c) of the Optional Protocol;

(b) This decision shall be communicated to the State party and to the author.